

Medway Council's procedure for dealing with Member Conduct complaints under the Localism Act 2011

1. Introduction

Medway Council is committed to high standards of behaviour and conduct by Councillors and Co-opted members who are visible community leaders. The Councillor Conduct Committee will promote high standards of behaviour and consider complaints raised about potential breaches of the Members' code of conduct.

Medway Council and the 11 Parish Councils have each adopted a Code of Conduct that is based on the seven principles of public life selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

It is important to note that the Councillor Conduct Committee can only look into complaints about a breach or potential breach of the Members' Code of Conduct. The Councillor Conduct Committee will use this procedure to determine how to deal with complaints, having regard to the flowchart at Appendix A and the Screening Process Tables (attached at Appendix B)

2. Presumptions

- Complaints should be settled quickly, efficiently and informally and in a way that represents value for money and takes into account the limited action that can be taken against a Member.
- Details of the allegations made against a Member should not be made public until the end of the process and only if there is an investigation (subject to the rules on access to information).
- If a complainant makes an allegation public before it is concluded that may bring an end to the process since that publicity could be similar in gravity to the most serious action the Council could ultimately take of censure This presumption will not apply in cases involving allegations of non-compliance with provisions in the Members' Code of Conduct relating to the registration and disclosure of Disclosable Pecuniary Interests as criminal proceedings may arise which cannot be discontinued by the Councillor Conduct Committee or the Monitoring Officer irrespective of publicity surrounding the complaint.

- Any investigations will be completed quickly and where possible by correspondence.
- There will be recognition from the outset of any complaint that the action that can be recommended at the end of any process must be proportionate to the need to ensure effective administration of the Council, the welfare of its staff or the reputation of the Council.
- Where a complaint is capable of resolution by a Political Group or Groups these will be referred for such resolution to the Leader and Whip of such Group or Groups.
- Where a complaint is considered to be trivial, malicious, vexatious, politically motivated or tit-for-tat and appears to relate to the “rough and tumble of political debate” and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or officers, then in most instances no further action will be taken.
- Any resolution or decision by the Groups or Groups is final and cannot of itself give rise to a complaint except to the Local Government Ombudsman.

3. Making a complaint

In the first instance if you have a concern about a Member arising out of their role as a Member as opposed to their private life, you are expected to discuss your concerns with the Monitoring Officer at Medway Council by telephone on 01634 332133. The Monitoring Officer is a senior officer with a legal background. They will discuss your concern and may suggest an alternative resolution to a formal complaint.

Complaints should be made within six months. The Committee is only likely to accept complaints that are older than six months where there are exceptional circumstances, for example, it is about an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light.

If you wish to make a complaint you can write to the Monitoring Officer or send an email to:

Perry Holmes, Monitoring Officer
 Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR
perry.holmes@medway.gov.uk

We would like you to use the form at Appendix C so that we have all the relevant information. Anonymous complaints will not normally be considered.

4. You can expect:

- An acknowledgement of your complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Councillor that a complaint has been received (unless to do so would prevent proper consideration of the complaint).
- That you will be kept informed about the progress of your complaint.
- That only the Members on the Councillor Conduct Committee will consider your complaint as the meeting will usually be held in closed session, in order to preserve the confidentiality of the process.

5. The Process

There are four main stages to our process; Screening, Investigation, Independent Review and Conclusion. At each stage we will be looking to quickly and informally resolve your concern.

The process we will follow is illustrated in the diagram at Appendix A.

5.1 In the **Screening** stage your complaint will be assessed against the criteria set out in the screening table at Appendix B and the presumptions above. This process will determine whether we will investigate your concern or seek to resolve it in another way. At this stage the Monitoring Officer will provide advice about process and the law. It will be a matter for the Councillor Conduct Committee to decide what action to take.

The Committee may decide to take no action, suggest an informal resolution, seek the views of the Independent Person, or send your complaint for investigation.

5.2 In the **Investigation** stage we will seek to get more information about your concern and then put the information we have into a report. We will put the emphasis on speedy investigations completed remotely through correspondence to speed up the process and provide better value for money. If a complaint is withdrawn at any stage we will discontinue the process including any investigation.

5.3 In the **Independent Review** stage we will present all the information to an Independent Person, who has no links to the Council, to seek their opinion on how to proceed.

The Localism Act 2011 provides that the Committee **must** seek, and take into account the views of the Independent Person before it makes a decision on an allegation that it has decided to investigate (section 28(7)(a) of the Localism Act). The Act also provides that the Committee **may** seek the views of the

Independent Person in relation to an allegation at any other stage within the complaints procedure (section 28(7)(b) of the Localism Act). The Independent Person is appointed by Full Council. A second Independent Person is also appointed, (“the Second Independent Person”), in the event that at any stage the Independent Person has any conflict of interest that prevents him/her from carrying out the role.

5.4 In the **Conclusion** Stage the investigation report and the Independent Person’s opinion will be presented to the Councillor Conduct Committee, a Committee of Councillors. This may be a paper process or you may have to attend to be asked questions. A decision will be made how to resolve the complaint. You will be notified of the outcome.

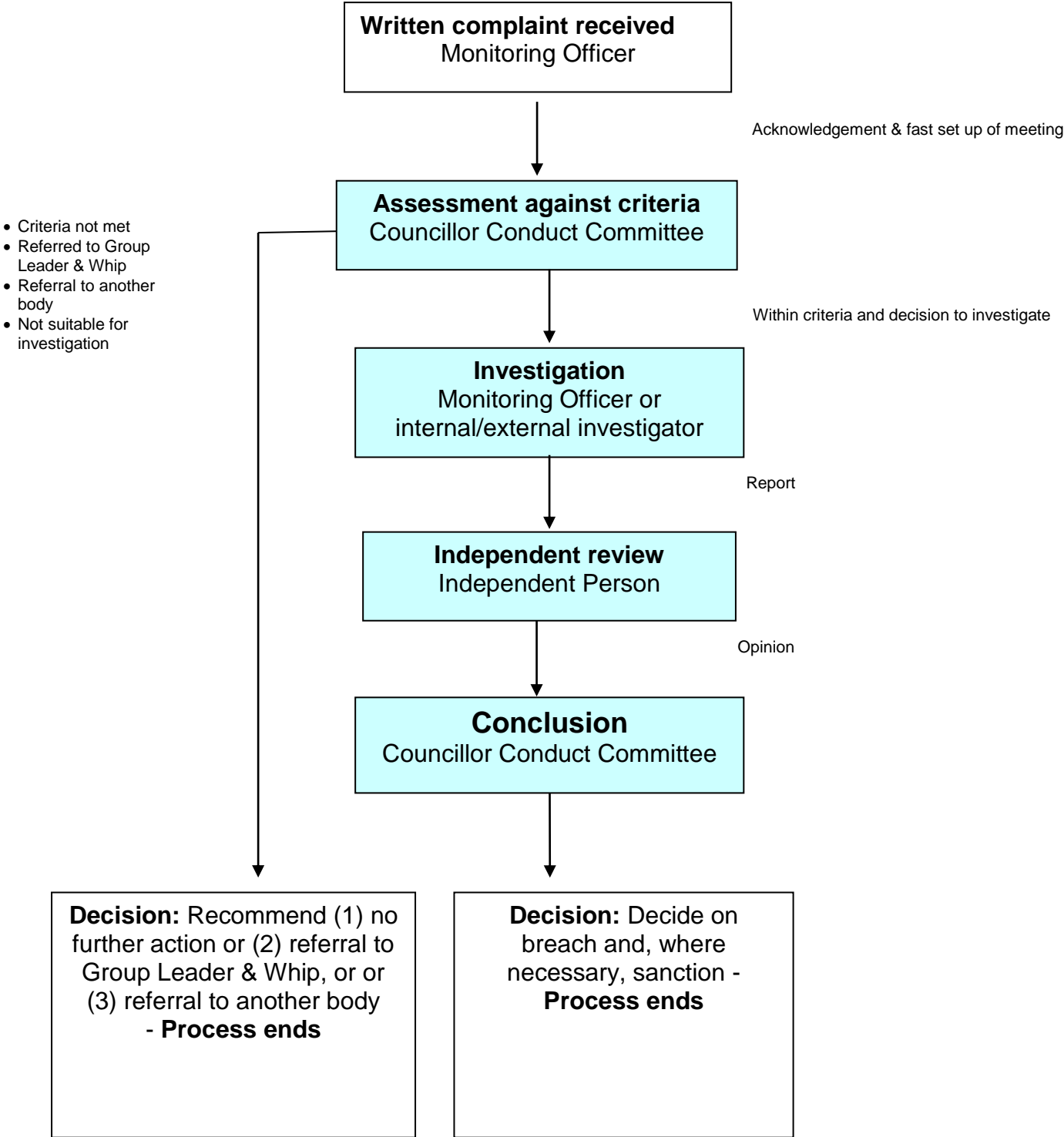
Before reaching its decision, the Complainant and subject Member have the right to make submissions as to the appropriate sanction (if any). Where the decision is communicated in writing, the Council will re-convene the Councillor Conduct Committee to consider the question of sanction. In such situations, the subject Member will be invited to submit their representations in writing to the Monitoring Officer in advance of the re-convened hearing.

6. If you are not satisfied with how your complaint has been dealt with

There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations or decisions of the Councillor Conduct Committee.

There is a right for any complainant, who is a member of the public, to refer the matter to the Local Government Ombudsman (LGO). The LGO does not have any powers to overturn the decision of the Committee but may ask the Committee to reconsider the matter or change its procedures if there is evidence of maladministration.

COMPLAINTS PROCESS FLOWCHART



MEDWAY COUNCIL SCREENING PROCESS FOR COUNCILLOR CONDUCT COMPLAINTS

Q	Medway Council Screening Process	Circle as necessary	Subsequent action
1	Is the complaint about an allegation under Section 34 of the Localism Act 2011? <i>(i.e. a potential breach of the Member's obligations relating to their Disclosable Pecuniary Interests)</i>	NO	Move onto Q2
		YES	Consider the allegation under the Legal Jurisdiction Test – see below <i>T Criminal Offence Investigations in Kent and Medway Protocol.</i>
2	Is the conduct complained of older than 6 months? <i>(If complaint is about an event that occurred 6-12 months ago, unless there are exceptional* circumstances, it will not be investigated).</i>	NO	Move onto Q3
		YES	No Further Action (NFA) unless exceptional circumstances
3	Is the complaint about a Medway Councillor, co-opted Member or Parish Councillor when acting in that capacity?	NO	NFA
		YES	Move onto Q4
4	Is the complaint from another Member and considered to be trivial, malicious, vexatious, politically motivated or tit-for-tat.	NO	Move to Q5
		YES	NFA, subject to the Independent Person sharing this view
5	On the face of the complaint, is the conduct something which is a potential breach of the Councillor Code of Conduct?	NO	NFA
		YES	Move onto Q6
6	Is the complaint one that should be referred to another body to investigate?	NO	Move onto Q7
		YES	NFA and refer to relevant body e.g. Police, HMRC

7	Could the complaint be dealt with by a Political Group?	NO	Move onto Q8
		YES	Refer to Political Group for resolution
8	Is the complaint capable of being resolved by an investigation bearing in mind the sanctions available	NO	NFA
		YES	Move onto Q9
9	Bearing in mind the circumstances of the complaint would it be proportionate and in the public interest** to investigate?	NO	Investigate, subject to the Independent Person sharing this view
		YES	NFA
Outcome of the Medway Council Screening Criteria Process?			

*"Exceptional circumstances" could include an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it has come to light.

The Public Interest will be determined on the basis of whether the complaint **can be investigated and in addition, whether it **should** be investigated.

Legal Jurisdiction Criteria Test

Test	Yes	No
a) Did the alleged conduct (take place) after the commencement of section 34 of the Localism Act?		
b) Was the person complained of a member of the Council at the time of the alleged conduct		
c) Was the person complained of acting in an official capacity at the time of the alleged conduct?		
d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?		
e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct? Please refer to the Code of Conduct		
f) The complaint is not about dissatisfaction with the Council's decisions, policies and priorities.		
Has the Legal Jurisdiction Criteria Test been met requiring a referral to the police?		

MEDWAY COUNCIL

COUNCILLOR CONDUCT COMPLAINT FORM

Before you submit your complaint

You can only submit a complaint against a Councillor or a Co-opted Member of a Committee when they are acting in their capacity as a Councillor or a Co-opted Member. This includes whenever they conduct the business of the Council, or act, claim to act, or give the impression they are acting, in their official capacity as a representative of the Council.

We would like to see if there is a way to resolve your complaint informally before you submit a formal complaint.

Please therefore contact the Monitoring Officer at Medway Council. The Monitoring Officer is a senior officer with a legal background who can advise you and explain the complaints process to you. Contact details are:

Telephone: 01634 332133

Email: perry.holmes@medway.gov.uk

If, having spoken to the Monitoring Officer, you still wish to make a formal complaint please complete this form as fully as possible:

1. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their Council:

Title	First name	Last name	Council or authority name

2. Please provide us with a summary of your complaint

3. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

4. Please tell us which best describes you:

- Member of the public
- Councillor or a co-opted member
- Member of Parliament
- Council officer
- Other
(.....)

How will we deal with your complaint

You can find full details about how we deal with complaints about a Councillor in our Process [link] and the flowchart [link]

In summary there are four main stages to our process;

- 1. Screening** - when the Councillor Conduct Committee will look at what you say has happened against a set of published criteria and decide whether it can be informally resolved or should be further investigated.
- 2. Investigation** - where we will ask someone to investigate your complaint in more detail and produce a report. This is likely to be by correspondence
- 3. Independent Review** - where we will ask someone unconnected to the Council called the Independent Person to review the information we have collected and to give us their independent opinion on how we should proceed.
- 4. Conclusion**- where we will decide whether the Member has breached the Code of conduct and what action to take.

At each stage we will be looking to quickly and informally resolve your concern.

You can expect:

- An acknowledgement of your written complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Member that a complaint has been received (unless to do so would prevent proper consideration of the complaint)
- That you will be kept informed about the progress of your complaint.

Details we would like from you

Please explain in this section (and/or on separate sheets) in detail what the member has done that you believe breaches the Code of Conduct:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide information setting out why you believe the Councillor or the Co-opted Member of a Committee was acting in their capacity as a Councillor or a Co-opted Member. Having considered your complaint, if it is decided that the Councillor or a Co-opted Member was acting in a personal capacity, then your complaint will not be pursued because this would not amount to a breach of the Code of Conduct.
- You should provide any other relevant background information.

Additional Help

Complaints must be submitted in writing which includes email. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

For advice about the process we will follow please contact:

Perry Holmes
Monitoring Officer
Medway Council
Gun Wharf
Dock Road
Chatham
Kent ME4 4TR

01634 332133

perry.holmes@medway.gov.uk